

December 24, 2019

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

JERRY BRUCE STOCK,

Appellant.

No. 52179-2-II

UNPUBLISHED OPINION

WORSWICK, J. — Jerry Stock appeals from the sentence imposed following his guilty plea convictions of two counts of second degree child molestation, communication with a minor for immoral purposes, and distribution of a controlled substance to a minor. Stock’s court appointed counsel on appeal has filed a motion to withdraw on the ground that there is no basis for a good faith argument on review.

Stock’s appellate counsel suggests two potential issues: (1) the community custody conditions prohibiting Stock’s access to “sexually explicit materials” are unconstitutionally vague, and (2) the community custody conditions prohibiting Stock from frequenting adult book stores or places providing sexual entertainment and prohibiting Stock from contacting telephone numbers that offer sexually explicit material are not sufficiently crime related. Stock has filed a

statement of additional grounds in which he also challenges certain community custody conditions.¹ We grant counsel's motion to withdraw and dismiss Stock's appeal.

FACTS

The State charged Stock by amended information with attempted second degree child rape and communication with a minor for immoral purposes. Stock later agreed to plead guilty to two counts of second degree child molestation, communication with a minor for immoral purposes, and distribution of a controlled substance to a minor pursuant to *In re Pers. Restraint of Barr*, 102 Wn.2d 265, 684 P.2d 712 (1984), and *North Carolina v. Alford*, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970).

According to the probable cause statement, the State based its original charges on Stock's response to a Craigslist advertisement, his subsequent e-mail communications with an undercover officer posing as a 13-year-old, and his attempt to meet with the officer posing as a 13-year-old. The probable cause statement stated that Stock possessed unopened boxes of condoms, lubricant, and a syringe containing methamphetamine when he was arrested.

At the change of plea hearing, Stock stated that he was freely and voluntarily pleading guilty to the amended charges after discussing the matter with his attorney. The trial court accepted Stock's guilty pleas, finding that they were knowingly, voluntarily, and intelligently made. The trial court also found that the probable cause statement provided a factual basis supporting the State's original charges and that Stock was pleading guilty pursuant to *In re Barr*

¹ Additionally, Stock requests in his statement of additional grounds that we deny an award of appellate costs if the State is the prevailing party. Because we do not award appellate costs in cases addressing motions to withdraw filed pursuant to *Anders v. California*, 386 U.S. 738, 744, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967), we do not address Stock's request. *State v. Stump*, 185 Wn.2d 454, 458-65, 374 P.3d 89 (2016).

to the lesser offenses of second degree child molestation and distribution of controlled substances to a minor to avoid greater punishment. 102 Wn.2d 265.

At sentencing, the trial court imposed the following community custody conditions over Stock's objections:

6. Do not possess or access any sexually explicit material or frequent adult bookstores, arcades or places where sexual entertainment is provided.
.....
9. Do not go to or frequent places where children congregate, included but not limited to: i.e., playgrounds, etc., unless otherwise approved by the Court.
.....
15. Shall be prohibited from joining or perusing any public social websites, i.e., Facebook, MySpace, Craigslist, Backpage, etc[.]
16. Do not contact (900) telephone numbers that offer sexually explicit material and provide copies of phone records to CCO upon request.

Clerk's Papers (CP) at 52-53. Stock appeals from the sentence imposed following his guilty plea convictions.

ANALYSIS

I. MOTION TO WITHDRAW

RAP 15.2(i) provides that court-appointed counsel should file a motion to withdraw "[i]f counsel can find no basis for a good faith argument on review." Pursuant to *Anders v. California*, 386 U.S. 738, 744, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967), and *State v. Theobald*, 78 Wn.2d 184, 185, 470 P.2d 188 (1970), counsel's motion to withdraw must

"be accompanied by a brief referring to anything in the record that might arguably support the appeal. A copy of counsel's brief should be furnished the indigent and time allowed him to raise any points that he chooses; *the court—not counsel—then proceeds, after a full examination of all the proceedings, to decide whether the case is wholly frivolous.*"

State v. Hairston, 133 Wn.2d 534, 538, 946 P.2d 397 (1997) (alteration in original) (quoting *Anders*, 386 U.S. at 744). This procedure has been followed. Stock’s counsel on appeal filed a brief with the withdrawal motion. Stock was served with a copy of the brief and informed of his right to file a statement of additional grounds for review. Stock filed a statement of additional grounds.

The material facts are accurately set forth in counsel’s brief in support of the motion to withdraw. We have reviewed the briefs filed in this court and have independently reviewed the entire record. We specifically considered the following potential issues raised by counsel:

1. Are the conditions of community custody [prohibiting Stock’s access to sexually explicit materials] unconstitutionally vague?
2. Did the sentencing court err in imposing community custody conditions [that prohibit Stock from frequenting adult book stores or places providing sexual entertainment and prohibit Stock from contacting telephone numbers that offer sexually explicit material, because the conditions] are not sufficiently related to the circumstances of appellant’s offenses?

Motion To Withdraw at 2.

Regarding the first potential issue raised by counsel, there is no good faith argument that the conditions of community custody prohibiting Stock’s access to “sexually explicit material” is unconstitutionally vague. Our Supreme Court has rejected the claim that the term “sexually explicit material” is unconstitutionally vague, reasoning that a person of ordinary intelligence would understand what a prohibition relying on the term would encompass based on dictionary definitions. *State v. Nguyen*, 191 Wn.2d 671, 680, 425 P.3d 847 (2018). Our Supreme Court further reasoned that the statutory definition of “sexually explicit material” set forth in RCW

9.68.130(2)² further bolstered its conclusion that the term is not unconstitutionally vague. *Nguyen*, 191 Wn.2d at 680. Accordingly, there is no good faith argument that Stock’s community custody conditions prohibiting his access to sexual explicit materials is unconstitutional vague.

Regarding the second potential issue raised by counsel, there is no good faith argument that the community custody conditions prohibiting Stock from frequenting book stores or places providing sexual entertainment and prohibiting Stock from contacting telephone numbers that offer sexually explicit material are not sufficiently crime related. RCW 9.94A.703(3)(f) provides sentencing courts with statutory authority to order an offender to “[c]omply with any crime-related prohibitions.” Former RCW 9.94A.030(10) (2017) defined a “crime-related prohibition” in relevant part as “an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted.” A trial court does not abuse its discretion in imposing a crime related prohibition so long as the prohibition is “reasonably related” to a crime of conviction. *Nguyen*, 191 Wn.2d at 684.

In *Nguyen*, our Supreme Court held that community custody conditions imposed on defendants convicted of sex crimes are reasonably related to those crimes when the conditions address the offenders’ inability to control their sexual urges, even where the conduct being prohibited played no role in their crimes. 191 Wn.2d at 686-87. Here, Stock pleaded guilty to

² RCW 9.68.130(2) provides:

“Sexually explicit material” as that term is used in this section means any pictorial material displaying direct physical stimulation of unclothed genitals, masturbation, sodomy (i.e., bestiality or oral or anal intercourse), flagellation or torture in the context of a sexual relationship, or emphasizing the depiction of adult human genitals: PROVIDED HOWEVER, That works of art or of anthropological significance shall not be deemed to be within the foregoing definition.

two counts of second degree child molestation. The community custody conditions prohibiting Stock from frequenting book stores or places providing sexual entertainment and prohibiting him from contacting telephone numbers that offer sexually explicit material clearly relate to Stock's inability to control his sexual urges and, therefore, are reasonably related to his child molestation convictions. Accordingly, there is no good faith argument that the community custody conditions are not sufficiently related to Parker's crimes of conviction.

II. STATEMENT OF ADDITIONAL GROUNDS

In his statement of additional grounds, Stock first argues that the community custody conditions prohibiting him from frequenting book stores or places providing sexual entertainment and prohibiting him from contacting telephone numbers that offer sexually explicit material are not sufficiently crime related. This was a potential issue raised by counsel that we have addressed above. Having determined that there is no good faith argument supporting this claim, we do not further address it.

Next, Stock claims that the community custody condition prohibiting him from going to or frequenting "places where children congregate, included but not limited to: i.e., playgrounds, etc., unless otherwise approved by the Court." is unconstitutionally vague. Again, there is no good faith argument supporting this claim.

In *State v. Wallmuller*, 194 Wn.2d 234, 449 P.3d 619 (2019), our Supreme Court held that a similar condition prohibiting an offender from frequenting "places where children congregate" that included a nonexclusive list of prohibited locations was not unconstitutionally vague. In so holding, our Supreme Court concluded that the term "places where children congregate . . . puts an ordinary person on notice that they must avoid places where one can

expect to encounter children, and it does not invite arbitrary enforcement.” *Wallmuller*, 194 Wn.2d at 245. Our Supreme Court further concluded that the constitutional vagueness doctrine does not require sentencing courts “to specifically list every place a person convicted of victimizing children is prohibited from loitering.” *Wallmuller*, 194 Wn.2d at 244. Under *Wallmuller*, there is no good faith argument that the condition prohibiting Stock from frequenting places where children congregate is unconstitutionally vague.

Next, Stock claims that the community custody condition prohibiting him from “joining or perusing any public social websites, i.e., Facebook, MySpace, Craigslist, Backpage, etc[.]” violates his First Amendment free speech rights and is unconstitutionally vague. CP at 53. Again, we conclude that there is no good faith argument supporting these claims.

Stock cites *Packingham v. North Carolina*, ___ U.S. ___, 137 S. Ct. 1730, 198 L. Ed. 2d 273 (2017) to support his claim that the condition prohibiting his access to public social websites violates his First Amendment rights. In *Packingham*, the United States Supreme Court held that a North Carolina law that “makes it a felony for a registered sex offender ‘to access a commercial social networking Web site where the sex offender knows that the site permits minor children to become members or to create or maintain personal Web pages’” violated the First Amendment because it restricted lawful speech. 137 S. Ct. at 1733 (quoting N.C. Gen. Stat. Ann. §§ 14-202.5(a), (e) (2015)). *Packingham* is clearly distinguishable and does not support Stock’s claim.

Packingham addressed the constitutionality of a criminal statute, but here Stock challenges a condition of his community custody. And it is well established that a “defendant’s constitutional rights during community placement are subject to the infringements authorized by

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the SRA [(Sentencing Reform Act of 1981)].” *State v. Riles*, 135 Wn.2d 326, 347, 957 P.2d 655 (1998) (quoting *State v. Ross*, 129 Wn.2d 279, 287, 916 P.2d 405 (1996)), *abrogated on other grounds by State v. Valencia*, 169 Wn.2d 782, 239 P.3d 1059 (2010). A convicted defendant’s “First Amendment right ‘may be restricted if reasonably necessary to accomplish the essential needs of the state and public order.’” *State v. Bahl*, 164 Wn.2d 739, 757, 193 P.3d 678 (2008) (internal quotation marks omitted) (quoting *State v. Riley*, 121 Wn.2d 22, 37-38, 846 P.2d 1365 (1993)). But community custody prohibitions implicating First Amendment rights “must be sensitively imposed[,] . . . must be clear[,] and must be reasonably necessary to accomplish state needs and public order.” *Bahl*, 164 Wn.2d at 757-58.

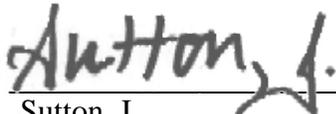
Here, as established in the probable cause statement, Stock engaged in sexually explicit conversations with a person he thought was 13 years old after responding to advertisement posted on the public social website Craigslist. The condition prohibiting Stock’s access to similar public social websites is clearly related to his crimes of conviction and is reasonably necessary to promote the State’s compelling interest in public safety. Moreover, unlike the criminal statute deemed unconstitutional in *Packingham*, here the condition does not create a blanket prohibition preventing Stock from accessing the internet altogether, and the prohibition applies only during Stock’s community custody term. It is therefore narrowly tailored to serve the State’s interest in public safety. *Bahl*, 164 Wn.2d at 757-58. The prohibition is also clear in its scope such that an ordinary person would be put on notice that they must avoid social media websites such as “Facebook, MySpace, Craigslist, Backpage, etc.” CP at 53. Accordingly, there is no good faith argument that the condition is unconstitutionally vague or that it violates Stock’s First Amendment rights.

Following our review of potential issues raised by counsel and the issues raised in Stock's statement of additional grounds, we conclude that the issues do not present a good faith argument for review. And our independent review of the record does not reveal any potential nonfrivolous issues that may be raised in this appeal. Accordingly, we grant counsel's motion to withdraw and dismiss Stock's appeal.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.


Worswick, J.

We concur:


Sutton, J.


Cruiser, J.